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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Civil Action No. 08-2070

In Regard to the Matter of:

Bayside State Prison

Litigation

OPINION AND REPORT

OF THE

FLOYD LARRY,

SPECIAL MASTER

-vs-

WILLIAM H. FAUVER, et al,

Defendants.

* * * *

FRIDAY, AUGUST 15, 2008

* * * *

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

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Transcript of proceedings in the above

matter taken by Theresa O. Mastroianni, Certified

Court Reporter, license number 30X100085700, and

Notary Public of the State of New Jersey at the

United States District Court House, One Gerry Plaza,

Camden, New Jersey, 08102, commencing at 10:29 AM.

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856-546-1100

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A P P E A R A N C E S:

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BY: MARK ROSELLI, ESQUIRE

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- and -

BY: KENNETH LOZIER, ESQUIRE

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ATTORNEYS FOR THE DEFENDANTS

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1 JUDGE BISSELL: I now reopen
2 proceedings in the case of Floyd Larry, docket number
3 08-2070.

4 This opinion/report is being issued
5 pursuant to the directives of the Order of Reference
6 to a Special Master and the Special Master's
7 Agreement and the guiding principles of law which
8 underlie this decision to be applied to the facts
9 upon which it is based as set forth in the jury
10 instructions in the Walker and Mejias jury charges to
11 the extent applicable to the allegations of Mr.
12 Larry.

13 As finalized after review under Local
14 Civil Rule 52.1, this transcript will constitute the
15 written report required under paragraph seven of the
16 Order of Reference to a Special Master.

17 Mr. Larry had been housed at Yardville
18 on the date of Officer Baker's murder, but was
19 transferred to Bayside State Prison during the
20 lockdown and lodged at the farm. He was told at the
21 time he arrived there that the farm was in a lockdown
22 status. After going through conventional intake, he
23 went into a dormitory or barracks unit. From Exhibit
24 D-286, the log book for Number Two Barracks, it is
25 confirmed that during the first shift on August 12th

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1 20 inmates arrived at the farm. This is essentially
2 consistent with the testimony of Mr. Larry.

3 He says upon their arrival and their
4 going into the barracks, apparently that very day,
5 the SOG bus came up, officers came in, made the usual
6 amount of noise, directing inmates to be head down,
7 face down in the pillows, locking their fingers
8 behind their heads, crossing their legs and so forth.

9 Mr. Larry said that, as a result of his
10 confusion and being the first time in the prison
11 system, he may have reacted more slowly than they
12 would have liked; (it's the only reason he can give
13 for it), and said they came up and hit him in his
14 legs with a night stick on his bed, among other
15 things behind his left knee more than once. He was
16 hit some five or six times according to him. The
17 SOGs were talking once again about the fact of
18 Officer Baker's murder and they weren't going to
19 tolerate prisoners injuring or hurting one of them.

20 Plaintiff claims that he asked for
21 medical attention from the housing officer on his
22 shift, still the first shift, who said no. He claims
23 that he then asked for medical attention when the
24 officer came on for the second shift and that officer
25 said it's not on my shift, so get back to your bunk.

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1 I find, however, no contemporaneous
2 evidence that would support the happening of this
3 event. I do note a report of a visit with Doctor
4 Beckler introduced as P-105, but that was introduced
5 for identification only because it couldn't be
6 adequately attributed. I will accept it for the one
7 purpose, that he made a complaint about his left
8 knee, but that occurred in the year 2000 and for that
9 reason I determined that there was no basis to
10 attribute any residual condition of Mr. Larry to the
11 alleged event at Bayside.

12 Mr. Larry's ARF was completed in 2001,
13 after the onset of the lawsuit. Hence, the
14 assertions in that document have no independent
15 probative value.

16 Officers Flumenbaum and Lambert
17 testified that they were on duty in that area,
18 recognized the entries in the log books, talked in
19 terms of how inmate complaints would have been
20 handled and indicated that under no circumstances
21 would a complaint such as that merely be brushed off
22 by saying go back to bed.

23 I find that there is some inherent
24 credibility in the testimony of these officers, among
25 other things, because of the very open area and

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1 atmosphere at the farm. Decent relationships between
2 inmates and officers in that setting are even more
3 important than they are in a medium security facility
4 with locked cells. The Bayside officers who
5 administer those facilities have a real incentive,
6 one, not to allow this type of conduct by SOG
7 officers with no legitimate purpose for being there
8 to take place, and two, not to be so unresponsive to
9 any alleged injuries. There just is no inherent
10 sense in that.

11 Also there is nothing presented here of
12 entries in the SOG log which would indicate that they
13 were in the area, particularly in the area of
14 Barracks Two on that occasion. In addition, defense
15 witnesses testified that when the SOGs were in the
16 area, they were normally outside the barracks dealing
17 with prisoner transfers. While SOGs might enter the
18 barracks for the transfer of prisoners between units
19 at Bayside, they would not come into the barracks to
20 escort new arrivals in. The testimony we have here,
21 as best I can recall, is that they remain outside
22 under those circumstances.

23 Officer Lambert testified quite
24 unequivocally he would not permit beatings in his
25 barracks because he's liable for inmate safety and

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1 his own. And that would be particularly the case, I
2 think, for something totally unjustified and totally
3 unprovoked like this.

4 Finally, once again, on the question of
5 the knee injury and the lack of a complaint, I find
6 this is a case like several others we've had where
7 while one might say I don't want to complain about my
8 knee injury inflicted by guards because of the fear
9 of retaliation, it would seem that certainly one
10 could make a complaint about a knee injury without
11 attribution or perhaps asserting a different cause
12 and still be able to obtain some relief. That didn't
13 occur here.

14 Essentially I view this as a burden of
15 proof case. I know that sometimes it can be
16 considered a safe harbor into which one may retreat,
17 but there are occasions, such as this matter, where
18 the case really turns on the failure of Mr. Larry to
19 sustain his burden of proof by a preponderance of the
20 credible evidence. His claim just wasn't proven.

21 In conclusion, although not every item
22 of evidence has been discussed in this
23 opinion/report, all evidence presented to the Special
24 Master was reviewed and considered. For the reasons
25 set forth above, I recommend in this report that the

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1 district court enter an order and judgment of no
2 cause for action for Floyd Larry.

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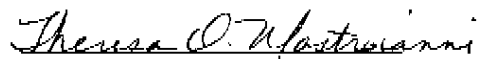
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I, Theresa O. Mastroianni, a Notary Public and
Certified Shorthand Reporter of the State of New
Jersey, do hereby certify that the foregoing is a
true and accurate transcript of the testimony as
taken stenographically by and before me at the time,
place, and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a
relative nor employee nor attorney nor counsel of any
of the parties to this action, and that I am neither
a relative nor employee of such attorney or counsel,
and that I am not financially interested in the
action.



Theresa O. Mastroianni, C.S.R.

Notary Public, State of New Jersey

My Commission Expires May 5, 2010

Certificate No. X10857

Date: August 26, 2008

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